

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WHEELER ZAMICHIELI	:	CIVIL ACTION
Plaintiff,	:	
VS.	:	CASE NO. 12-3200
	:	DELAWARE DESIGNATION
CITY OF PHILADELPHIA, ET AL.	:	FOR SERVICE, JUDGE
Defendants,	:	GREGORY M. SLEET

PLAINTIFF'S MOTION TO ORDER MUNICIPAL DEFENDANTS'  
TO COMPLY WITH ITS OBLIGATION TO GIVE SERVICE TO  
TO PLAINTIFF UNDER CIV.R.5, AND THAT SERVICE BE  
MADE BY U.S. CERTIFIED MAIL TO ENSURE RECEIPT

Plaintiff, Wheeler Zamichieli respectfully moves this  
Honorable Court to order the Municipal Defendants' attorney,  
Brock Atkins to comply with Civ.R. 5, and to ensure that all  
defendant filings be received by Plaintiff via U.S. Certified  
Mail.

I. BACKGROUND

Under Civ.R. 33,34, Plaintiff on June 15, 2015 filed a  
Request For Interrogatories and Production of Documents, Direc-  
ted To Defendants' William Andrews, Melvin Victor and Ronald  
Dove, which was served upon Asst. City Solicitor Dimitrios Mav-  
roudis, by Plaintiff via U.S. Mail.

On June 17, 2015, Asst. City Solicitor Brock Atkins entered his appearance on behalf of municipal Defendants William Andrews, Melvin Victor, Ronald Dove and the City Of Philadelphia. **No Certificate of Service was made**, given notice to Plaintiff in the matter. (See D.I. 106).

On June 23, 2015, Asst. City Solicitor Dimitrios Mavroudis gave Notice of Withdrawal of Appearance, on behalf of William Andrews, Ronald Dove, the City of Philadelphia and Melvin Victor. **No Certificate of Service was made**, given notice to Plaintiff in the matter. (See D.I. 107).

Solicitor Brock Atkins never filed a response to Plaintiff Request For Interrogatories and Production of Documents, so Plaintiff on August 17, 2015 filed a Motion To Compel, given service to Atkins, after learning via Clerk of Court that he entered his appearance back in June. (See D.I. 109).

On October 7, 2015, the Court Ordered that, ("defendants shall respond to (Plaintiff's) Motion To Compel Interrogatories and Production of Documents (D.I. 109) no later than October 28, 2015")(See D.I. 111).

On October 30, 2015, Plaintiff received an Order from the Court dated October 26, 2015, noting ("upon consideration of Plaintiff's Motion for an Order compelling discovery responses, and Defendants response (D.I. 112) hereto, it is hereby Ordered that said motion is denied and Municipal Defendants are given 30 days to respond to the outstanding discovery requests"). (See Order).

II. ARGUMENT

The Federal Rules Of Civil Procedure "Rule 5" requires that, service be made by a party when filing pleadings and papers on an opposing party to an action. Effective service can be made by (1) mailing to the person's last known address, and (2) by Electronic Filing. See Fed.R.Civ.P.5(b)(2)(c) and 5(b)(2)(e).

Unfortunately, Plaintiff is incarcerated while proceeding pro se, without having access to the "Electronic Case Filing System" and so, he relies ultimately on the Court and defendant attorney in this action to give service of all pleading and papers to him via U.S. Mail.

Consequently, municipal defendant attorney "Brock Atkins" has failed to give service to Plaintiff back on June 23, 2015, when entering his appearance, and in the latest of filing on October 15, 2015 has not effectuated service of Document No. 112.

Plaintiff argues, he has not received D.I. 112, and it was only by receiving the Courts' 10/30/15 Order, mentioning that municipal defendants filed a response to D.I. 109, under D.I. 112 that Plaintiff knew a response was filed. See Exhibit A, Sworn Declaration of non-receipt of D.I. 112.

Plaintiff argues that, he has been deprived of his rights to file an opposition of D.I. 112, by either (1) Mr. Brock has failed to mail D.I. 112 to Plaintiff, or (2) someone has intentionally delayed or obstructed Plaintiff's U.S. Mail in violation of 18 U.S.C. § 1701-03.

Moreover, Plaintiff argues that the municipal defendants should not have been given an additional 30 days to respond to D.I. 109, because this civil action has been pending for over 3½ years, and defendants haven't even answered interrogatories, much less, produced reasonable discovery.

Out of an abundance of caution, Plaintiff argues that the Court should order municipal defendant attorney "Brock Atkins" to provide Plaintiff with actual receipt of all pleadings and papers filed, by U.S. Certified Mail/Return Receipt to alleviate confusion of U.S. Mail mishaps.

### III. CONCLUSION

Plaintiff argues, "Good Cause" exist here to order actual receipt of service, similar to Fed.R.Civ.P.4(i)(1)(b) and R.A.P. 4(a)(6). Although sending the pleading through regular U.S. Mail would constitute effective service under Fed.R.Civ.P.5(d), "Rule 4(a)(6) refers to actual receipt, not simply effective service[.]" In re World Com. Inc., 708 F.3d 327, 334 (2d Cir. 2013); Khor chin Lim v. Courtcall, Inc., 683 F.3d 378, 380 (7th Cir. 2012)("[A] document is not received under Rule 4(a)(6) until it arrives at the litigants address.")(citing Williams v. Washington Convention Ctr. Auth, 481 F.3d 856, 375 U.S. App. D.C. 360 (D.C. Cir. 2007); Poole v. Family Court of New Castle Cnty, 368 F.3d 263 (3d Cir. 2004)).

WHEREFORE, PLaintiff Respectfully ask the Court to grant this motion, based on the facts raised herein.

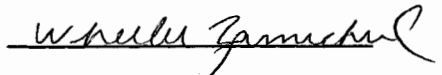
DATE: NOVEMBER 1, 2015

RESPECTFULLY SUBMITTED,  
  
WHEELER ZAMICHELII

SWORN DECLARATION

I Wheeler Zamichieli, hereby swear, verify and certify that, I have not received by U.S. Mail via Federal Detention Center of Philadelphia Prison Authorities, [Civil Docket Doc. D.I. 112, filed by Solicitor Brock Atkins on October 15, 2015 under Civil No. 12-3200-GMS]. Any false statement made by me herein, is subject to the penalties of perjury, 18 U.S.C. § 1746.

Executed on this 1st day of November 2015.

  
Wheeler Zamichieli  
Plaintiff  
Fdc Philadelphia

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WHEELER ZAMICIELI	:	CIVIL ACTION
Plaintiff,	:	
VS.	:	CASE NO. 12-3200
	:	
CITY OF PHILADELPHIA, ET AL.	:	DELAWARE DESIGNATION
Defendants,	:	FOR SERVICE, JUDGE
	:	GREGORY M. SLEET

ORDER

AND NOW, this            day of            , 2015,  
upon consideration of Plaintiff's Motion To Order Municipal  
Defendants' To Comply With Its Obligation To Give Service  
To Plaintiff Under Civ.R.5, And That Service Be Made By U.S.  
Certified Mail To Ensure Receipt, it is HEREBY ORDERED that  
said motion Be and Is GRANTED.

BY THE COURT:

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GREGORY M. SLEET, J.

CERTIFICATE OF SERVICE

I hereby certify that, a true and correct copy of the following: Plaintiff's Motion To Compel Second Request For Interrogatories And Production Of Documents Directed To Defendant City of Philadelphia; and Plaintiff's Motion To Order Municipal Defendants' To Comply With Its Obligation To Give Service To Plaintiff Under Civ.R.5, And That Service Be Made By U.S. Certified Mail To Ensure Receipt, has been served upon the person below, by U.S. Mail, and by U.S. Clerk Of Court via Electronic Case Filing System "ECF."

ASSISTANT CITY SOLICITOR  
BROCK ATKINS, ESQ.,  
CIVIL RIGHTS LAW DEPT.,  
1515 ARCH STREET  
14TH FLOOR  
PHILA, PA. 19102

DATE: NOVEMBER 1, 2015

RESPECTFULLY SUBMITTED,

  
WHEELER ZAMICHEL I

INST#67271-066

FDC PHILADELPHIA

P.O. BOX 562

PHILA, PA. 19106



WHEELER ZAMICHIELI

1st Class Mail

INST#67271-066

FEDERAL DETENTION CENTER

P.O. BOX 562

PHILA, PA. 19106

UNITED STATES DISTRICT COURT  
MICHAEL KUNZ, CLERK OF COURT  
21400 U.S. COURTHOUSE  
601 MARKET STREET  
PHILA, PA. 19106

U.S.M.S.  
X-RAY